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Landlord and Tenant

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LANDLORD AND TENANT

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Lessor's Liability for Property Damage Caused by His Breach of a Covenant to Repair.

In *Brown v. National Oil Co.*,[1] lessee, operator of a gasoline station leased from an oil company, sued lessor and its servant for damages resulting from a fire at the station allegedly caused by the negligence of the defendants. The jury having returned a verdict against defendant lessor alone, the trial judge granted lessor's motion for judgment *non obstante veredicto* on the ground that there was no evidence of negligence on lessor's part independent of the alleged negligent acts of lessor's servant. On appeal, reversed and remanded for entry of judgment on the verdict for plaintiff, on the ground that the evidence made a jury question as to whether a proximate cause of the fire was lessor's negligence in failing to provide adequate vents for underground gas storage tanks on the leased premises. The Court dismissed lessor's contention that it would not be liable for defects in the premises saying " . . . there is no merit in it. The testimony abundantly shows the equipment was furnished by the oil company and that it undertook to maintain and keep it in good repair."[2] Since the case involves a claim for property damage rather than for personal injury it is distinguishable from *Timmons v. Williams Wood Products Corporation*.[3] Furthermore, seemingly

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1. 233 S. C. 345, 105 S. E. 2d 81 (1958).

2. In support of the quoted statement the Court cited Cooper v. Graham, 231 S. C. 404, 98 S. E. 2d 843 (1957), which held that even though a station operator was an independent contractor rather than an agent of an oil company, the company nevertheless would be liable for injuries sustained by a servant of the independent contractor as a result of the company's breach of contract in failing to maintain properly a grease pit furnished the independent contractor. As Brown v. National Oil Co., note 1 *supra*, in no way involves the independent contractor doctrine, the authority cited is not wholly appropriate. For cases from other jurisdictions holding a lessor liable for property damage caused by breach of a covenant to repair, see Annotations 28 A. L. R. 1448, 1505 (1924), 28 A. L. R. 2d 446, 485 (1953). But consider Cantrell v. Fowler, 32 S. C. 589, 10 S. E. 934 (1890), stating that unless forbidden to do so by lessor, lessee should make repairs at his own expense and charge the same to lessor rather than allow his property to be exposed to injury because of lessor's breach of covenant to repair.

3. 164 S. C. 361, 162 S. E. 329 (1932), holding a lessor's breach of a covenant to keep a dwelling in repair not to impose liability for personal

the facts fall within two of the recognized exceptions to the *Timmons* rule:[4] (1) the defect was a latent one known only to lessor; (2) that needed repairs were negligently made (the opinion quotes testimony by lessor's servant that earlier he had been instructed "to put a practical vent in there like was supposed to be there").

Other Cases

Three other landlord and tenant cases were decided during the survey period. One[5] is concerned principally with procedural matters. In a second[6] parol evidence in clarification of an ambiguous provision in a written lease relating to repairs was held admissible. A third case[7] affirmed a tenant's ejectment for nonpayment of rent despite his plea of a tender made after institution of suit, and that such delayed tender was justified by the landlord's mistaken assertion of a right to possession during the term of the lease.

Legislation

No landlord and tenant legislation was enacted during the survey period.

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injury sustained as a consequence of the breach. Although *Timmons* at one time clearly represented the majority view, the trend now is *contra*. See generally, Annotations 8 A. L. R. 765 (1920), 68 A. L. R. 1194 (1930), 163 A. L. R. 300 (1946); PROSSER, TORTS 474 (2d ed. 1955); RESTATEMENT, TORTS §§ 357, 378; Note 10 S. C. L. Q. 307, 317 (1958).

4. 164 S. C. 361, 374, 162 S. E. 329 (1932).

5. Laughlin v. Livingston, 233 S. C. 81, 103 S. E. 2d 741 (1958).

6. Charles v. B. & B. Theatres, Inc., 234 S. C. 15, 106 S. E. 2d 455 (1959).

7. Wright v. Player, 233 S. C. 223, 104 S. E. 2d 289 (1958).